

**ZONING BOARD OF ADJUSTMENT
JULY 9, 2014 MEETING
DRAFT MINUTES**

Board members present included Acting Chairman Nicholas Wallner, Rob Harrison Jr., Stephen Norton and James Monahan. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

- 19-14 Ron Richter for RNL Properties, LLC:** Applicant wishes to develop a residential planned unit development (PUD) of 5 duplexes and 5 single-family dwellings in addition to an existing 3 unit multi-family dwelling and requests the following:
- 1) Variance to Article 28-4-8(d)(1), (Permitted) Principal Uses, to permit the inclusion of an existing 3 unit multi-family dwelling as part of a PUD when multi-family dwellings are only permitted as part of PUD developments for the elderly,
 - 2) Variance to Article 28-4-8(e)(1), Minimum Tract Requirements for a PUD, to permit the development of a PUD on a 5.6 acre tract of land when a minimum tract size of 10 acres is required for a PUD in a Residential Medium Density District,
- for property at 61 Borough Road in an RM Residential Medium Density District.

Nick Wallner explained that only three Board members were available to hear this case as Mr. Harrison needed to recuse himself. Mr. Richter had a choice of either going forward or waiting until a 5 member Board was available. If he chose to go forward, however, and a denial was the decision, the fact that the case was heard by a three (3) member board would not be grounds to request a rehearing.

Mr. Richter requested to defer his case to the September 2014 meeting when a full Board was available.

Mr. Walker let the audience know this case will be heard in September but no notices will be sent out.

At the end of the meeting the Board went back to reopen this case. A motion by Norton to open the case seconded by Harrison and passed by a 4-0 unanimous vote. A motion to then recess the case until the September 2014 meeting was made by Norton, seconded by Harrison and passed by a 4-0 unanimous vote.

- 21-13 Carolyn A. Parker for VSH Realty, Cumberland Farms:** (Request for Rehearing) (Recessed from June 4, 2014) Applicant wishes to install a scroller type sign and requests Variances to Article 28-7-7, Signs Prohibited Under this Ordinance:
- 1) Section (a), to permit a sign which has parts and surfaces that physically or visually move when signs that have parts or surfaces that physically move are prohibited,
 - 2) Section (r), to permit an electronically activated changeable message sign (EMC) when EMC signs are prohibited in the City of Concord,
- for property at 47 Fisherville Road in a CG General Commercial District.

A request to Table the case until the September 3, 2014 ZBA meeting was made by the Applicant. A motion to Table until the September meeting was made by Norton seconded by Harrison and passed by a 4-0 unanimous vote.

- 40-13 Barlo Signs for Carlsons Motorcorp:** (Recessed from June 4, 2014) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 13 Manchester Street in a GWP Gateway Performance District.

- 41-13 Barlo Signs for Baron's:** (Recessed from June 4, 2014) Applicant requests the Zoning Board overturn the Zoning Administrator's determination that the use of a remotely programmable electronic message sign for variable background illumination is a use that is not permitted under the City of Concord's Zoning Ordinance for property at 350 Loudon Road in a GWP Gateway Performance District.

Applicant would like to recess their cases until September 2014. A motion to recess until the September 2014 meeting was made by Norton, seconded by Harrison and passed by a 4-0 unanimous vote.

21-14 April Begosh for Diann Sanel: Applicant wishes to establish/expand personal pet grooming services to include pet wellness services such as massage, chiropractic, reiki and daytime care for pets to occupy 100% of the existing structure where the existing pet grooming business was established by Variance in conjunction with a wholesale pet food distribution business (ZBA case 4315-1987) and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit a pet wellness center (service use D-1) where such use is not permitted,
 - 2) Variance to Article 28-2-4(j), Table of Principal Use, to permit a "doggy day care" (commercial kennel use M-8) where such use is not permitted,
 - 3) Variances to Article 28-7-1(a), Applicability, to permit a change of use of an existing structure while maintaining existing access, circulation, loading and parking configurations and not bring the property into compliance with Articles:
 - a) 28-7-2(e), Table of Off-Street Parking, to provide 7 parking spaces when 13 spaces would be required,
 - b) 28-7-2(e), Minimum Aisle Widths, to maintain existing internal aisle widths ranging from as narrow as 12 feet for two-way traffic where 24 feet is the minimum width allowed for two-way aisle widths,
 - c) 28-7-7(g), Setbacks & Restrictions, Section (2), Setback from Lot Lines, to permit the parking area adjacent to a collector street (Airport Road) to be within 1 foot +/- of the front lot line when a 10 foot setback is required to be maintained from a collector street,
 - d) 28-7-10, Parking Area Landscaping Standards, Section(a), Parking Area Landscaping Standards, to maintain the existing parking lot perimeter landscaping conditions with no landscaping where a 10 foot landscaped strip is required adjacent to Airport Road and the remaining perimeter is required to be 5 feet,
- for property located at 108 Airport Road in an IN Industrial Zoning District.

Application was determined incomplete and was withdrawn.

22-14 Father Richard Roberge for the Roman Catholic Bishop of Manchester: Applicant wishes to subdivide a property to create two separate lots for each primary structure, 52 & 54 Pleasant Street, and establish an office use (use F-1) as a primary use within the rectory building at 52 Pleasant Street and requests the following:

- 1) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the new property line with a side yard setbacks ranging from 14.3 feet from the northeast and 14.8 feet from the southeast corners of the building and within 4 feet of the enclosed stairwell and 2 feet of the open stairway on the easterly side of the building when a 15 foot side setback is required (54 Pleasant Street),
 - 2) Variance to Article 28-7-7(g)(2), (Parking) Setbacks from lot lines, to permit the new property line to be within 0 feet of the edge of the existing paved parking area along the west side of the property where a 5 foot setback is required (52 Pleasant Street),
 - 3) Variances to Article 28-7-1(a), Applicability, to permit a change of use of an existing structure while maintaining existing access, circulation, loading and parking configurations and not bring the property into compliance with Articles:
 - a. 28-7-2(e), Table of Off-Street Parking Requirements, & 28-7-7(a), Standard Parking Spaces, to permit the provision of 5 compliant 9' x 19' parking spaces plus 6 non-compliant parking spaces when 19 parking spaces are required.
 - b. 28-7-5, Handicapped Accessible Parking, to provide no accessible parking spaces when a minimum of 1 van accessible space is required,
 - c. 28-7-7(e), Minimum aisle Width, to maintain existing internal aisle widths ranging from as narrow as 9 feet for one-way traffic where 15 feet is the minimum width allowed for one-way aisle widths,
 - d. 28-7-7(g), Setbacks & Restrictions, Section (2), Setback from Lot Lines, to permit the parking area adjacent to a collector street (Green Street) to be within 5 feet +/- of the front lot line when a 10 foot setback is required to be maintained from a collector street,
 - e. 28-7-10, Parking Area Landscaping Standards, Section(a), Parking Area Landscaping Standards, to maintain the existing parking lot perimeter landscaping as shown on the plans where a 10 foot landscaped strip is required adjacent to Green Street and the remaining perimeter is required to be 5 feet,
 - f. 28-7-12(b)(3), Performance District Standards, to permit parking in front of the building, east side
- for a property currently known as 52 – 54 Pleasant Street in a CVP Civic Performance District.

Charles Burr, 220 Academy Road, Pembroke NH testified. He is the business manager for Christ the King Parish. Three churches have been merged; St. John's, St. Peter's and Sacred Heart. They now have 3 separate properties which were originally 12 parcels. The churches have been operating at a loss. They are moving their main operations and all of their staff to St. John's Parish and intend to sell the Sacred Heart and St. Peter properties. The party that is interested in St. Peter's campus wants the whole thing. It became obvious they should try to seek a subdivision of the Sacred Heart

property so that they could market them separately. Tim Bernier is their surveyor. The property was originally two lots but the original lot line would cut through the church building so they are proposing a subdivision with a similar lot line to that which was originally there. The house which was used as a rectory and used as a residence is now an office and meeting space. There has been no priest living there and now the priests have moved to St. John's. They are proposing that the building be kept as office space.

Walker: The reason for the number of variances is that they are related to parking mostly at the rectory building. The rectory is an accessory use to the church building. Once it becomes separated it becomes a primary use. And as a change of use it is necessary to bring it into compliance with the parking standards.

Mr. Bill Norton, 11 Fellow Street, Concord; he is working with the parish to help them.

Steve Norton asked where their interest was in the property. Mr. Norton asked if he meant in the church or the rectory. He stated that the church is beautiful but inefficient. The original rectory was across the Street at 50 Pleasant Street. In 1952 they bought the new property and made it into the rectory. The City consolidates two adjacent properties. Neither parcel would be compliant under current zoning. They cannot sell either until they subdivide the property.

Monahan asked if there were no handicapped accessible parking. (no) Mr. Norton stated that the building is not handicapped accessible right now either. Monahan asked that if this meant that if the Board approved the handicapped parking request then the new owners would not need to come back for handicapped parking relief. (correct) Harrison asked if the variance goes with the building or the owner. Walker stated that the variance goes with the land.

Mr. Norton stated that Green Street has businesses on it; there is an accounting firm, office building, etc. This building is close to those kinds of uses, parking is not in the correct configuration. Harrison asked when the lots were merged. Mr. Norton stated that the lots were merged in 1933 just before church was built. Craig Walker showed them a 1932 plan off of the GIS system.

In favor: none.

In opposition: none.

Comments by Code Administration: Walker clarified merging the properties and the "Involuntary Merger" clause only applied to undeveloped parcels.

Rebuttal: none.

DECISION: A motion to approve request #1 and #2 was made by Norton as he felt that the denial of the variances would interfere with the reasonable use of property and the parking configuration is not out of character with the other office uses in the neighborhood, seconded by Monahan and passed by a 4-0 unanimous vote.

Variance #3, Norton stated that the Board doesn't know who or what the use would be so he feels it is not appropriate to consider #3b at this time. Monahan stated that approving would be depending on who the owner/use were, and that they should come back to the Board. Walker stated that the Board could Table request #3b. If this were Tabled it would stay there until someone came back and paid the fee to reopen the case. Monahan feels it is cleaner to deny request #3. Harrison agrees.

Motion to approve 3a, c, d, e & f was made by Norton, seconded by Monahan and passed by a 4-0 unanimous vote. A motion to deny request #3b was made by Norton seconded by Harrison and passed by a 4-0 unanimous vote.

- 23-14 Liberty Utilities & Energy North Natural Gas Inc.:** Applicant wishes to construct a compressed natural gas (CNG) trucking terminal (use K-4) and CNG fueling station (use J-6) and requests the following,
1. Variance to Article 28-2-2(b), Purposes of the Established Districts, Section (16), The Industrial (IN) District to waive the requirement that the proposed building be serviced by municipal sewer,
 2. Variance to Article 28-2-4(j), Table of Principal Uses, to permit a vehicle fueling facility (use J-6) where such use is not permitted as a primary use,
For property at 20 Broken Bridge Road (map 109, block 1, lot 14) and land to be annexed from adjacent property at 14 Broken Bridge Road for that portion of the resulting lot in the IN Industrial District

Atty Kevin Baum of Exeter NH testified. Bill Clark of Liberty Utilities & John Maher was also available to testify.

This proposal is for a compressed natural gas fueling facility at 20 Broken Bridge Road. The entire project is on 20 Broken Bridge Road in the Industrial Zone. This is a private facility. They will be filling up (tanker) trucks for distribution to commercial businesses. There are two components; a compressor station and a fueling station. It is only open to the company and customers of ABSG. Only available by key card access. There are no petroleum products. They expect 20 trailers to fill up a day, probably less. They are looking for approval for the full build out. Attorney Baum went to the map and explained the layout. He explained surrounding property uses. The proposed use is consistent with what has already been developed out there. Attorney Baum went through criteria. Major component is filling trucks there.

Walker explained the 2 separate items being discussed, variance for vehicle fueling station v. commercial trucking terminal which is permitted use in IN District.

Bill Clark, Liberty Utilities stated that there will be 8 trucks on a daily basis being filled up.

Attorney Baum explained the unnecessary hardship, the special conditions and the remoteness of the property. This property is primarily surrounded by other utility uses. They are not doing retail sales of gas there. It is private use only. The request for the waiver to extend and provide City sewer is due to the fact that there is no service down Broken Bridge Road and there will be no on site personnel. IF sanitary facilities are needed a septic system can be reasonably provided. The wooded parcel behind them is 90+ acres that will likely remain undeveloped due to wetlands. The use is not contrary to the public interest. There will be no effect on what is there now. This road consists hugely of industrial uses.

Norton asked what happens to liquefied gas activities on the adjacent property. It will remain.

Monahan asked how many tanks or bays there are. Will the pad accommodate more? Yes there will be eight total. That is their full build-out. John Maynard stated that the drawing submitted to the Board shows 10 bays, but there will only be 8.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve both requests was made by Monahan, seconded by Norton and passed by a 4-0 unanimous vote.

- 24-14 Joshua & Hillary Pincoske:** Applicant wishes to add a full second story to the rear portion of an existing single-family home and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit the construction of a second story and vertically extending an existing non-conforming side setback of 4 feet from the property line where a 10 foot side setback is required for property at 38 North Spring Street in an RD Residential Downtown District.

Tony Merulo of Epsom NH, their general contractor testified. The owner's, Joshua and Hillary Pincoske were also there to testify. Tony stated that they would like to add a full height second story to their home. He went through the plans included in the Board's packet.

Wallner asked if they were increasing their footprint. Merulo stated that they are not. They will be 4 feet from property line just as it is now.

Norton asked if this were consistent with the neighborhood. Mrs. Pincoske stated that their addition will still be shorter than their neighbors. Their neighbor has 2 full floors and they have one and not much more in the back. They have owned the house for 10 years. The attic bedroom for their 2 young children is no longer sufficient. Mr. Merulo has had conversations with the abutter and she is fine with it. The applicant's like where they live and hope to continue living at the house. They have done a lot of work improving the property in the time they have owned it. There has been a trend of property improvement in the neighborhood.

Norton asked if they were across from basketball court (park). Mr. Pincoske stated that they were.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Harrison as he felt it was a reasonable use (consistent with the neighborhood, no depreciation of value, within spirit of ordinance and fair), seconded by Monahan and passed by a 4-0 unanimous vote.

19-14 Ron Richter for RNL Properties, LLC: Applicant wishes to develop a residential planned unit development (PUD) of 5 duplexes and 5 single-family dwellings in addition to an existing 3 unit multi-family dwelling and requests the following:

- 1) Variance to Article 28-4-8(d)(1), (Permitted) Principal Uses, to permit the inclusion of an existing 3 unit multi-family dwelling as part of a PUD when multi-family dwellings are only permitted as part of PUD developments for the elderly,
 - 2) Variance to Article 28-4-8(e)(1), Minimum Tract Requirements for a PUD, to permit the development of a PUD on a 5.6 acre tract of land when a minimum tract size of 10 acres is required for a PUD in a Residential Medium Density District,
- for property at 61 Borough Road in an RM Residential Medium Density District.

At the end of the meeting the Board went back to reopen this case. A motion by Norton to open the case seconded by Harrison and passed by a 4-0 unanimous vote. A motion to then recess the case until the September 2014 meeting was made by Norton, seconded by Harrison and passed by a 4-0 unanimous vote. The recess was based on the applicant's right to be heard by a full 5 member board.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK
ZONING BOARD OF ADJUSTMENT